Filed 5/24/10 In re Javier A. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JAVIER A., a Person Coming Under the Juvenile Court Law.	B218332 (Los Angeles County Super. Ct. No. JJ16711)
THE PEOPLE, Plaintiff and Respondent, v. JAVIER A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Robert S. Ambrose, Referee. Affirmed.

Stephen Borgo, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Elaine F. Tumonis, Deputy Attorneys General, for Plaintiff and Respondent.

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Javier A., a minor, appeals from an order declaring him a ward of the court after a petition was sustained under Welfare and Institutions Code section 602 for possession of a concealable firearm in violation of Penal Code section 12101, subdivision (a)(1).[1] Appellant was ordered home on probation on certain terms and conditions. Appellant contends that (1) there is insufficient evidence to support the juvenile court's finding that he was in possession of a concealable firearm, rendering the judgment invalid under the due process clauses of the state and federal Constitutions and Welfare and Institutions Code section 701.1, and (2) the probation condition prohibiting appellant's father from possessing any guns is unconstitutionally overbroad.

We affirm.

FACTUAL BACKGROUND

The prosecution's evidence

On July 2, 2009, at approximately 8:15 p.m., Los Angeles County Sheriff's Deputy Terrence Bell and his partner, Deputy Perez, were on patrol driving near Compton Avenue and 60th Street when they saw appellant walking in the area. As they approached, appellant looked in their direction, quickly turned and attempted to jump over a fence. One of the deputies caught and detained him. Appellant smelled of marijuana.

After learning that appellant was on probation, the deputies took him to his residence to conduct a search. Several of appellant's family members, including his father, Emilio A., were present. When asked if there were any guns in the house, Emilio said that he had two. In plain view, the deputies found a nine-millimeter handgun in an entertainment cabinet in the living room and a .357-caliber gun on top of some clothes, inside an open closet, in what Emilio said was his room**.** Both of the guns were registered to Emilio. Deputy Bell found ammunition in the backyard, inside a tool box.

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1 All further statutory references are to the Penal Code unless otherwise indicated.

After being read his *Miranda*[2] rights, appellant told the officers that "he recently checked the gun [in the living room entertainment cabinet] to see if it was loaded." He said that he slept in the living room. Emilio also told deputies that appellant slept in the living room.

Defense's evidence

Emilio testified for the defense that he, his parents, his daughter and her husband and his older son lived with him, and another son sometimes lived in the garage. When the deputies arrived to search his house he told them that there was a nine-millimeter gun and a .357-caliber gun in the house, which only he handled. Appellant was not allowed to have access to the guns and had never seen them. The nine-millimeter gun, which had been kept in Emilio's bedroom, was moved to the unlocked entertainment cabinet in the living room two days earlier because Emilio was moving from his bedroom into the living room to make room for his daughter and her husband, who had just moved into the house. The gun was hidden in a cushion that had a zipper and was not in plain view. The .357-caliber gun was kept unloaded in Emilio's parents' bedroom, at the bottom of a plastic barrel underneath a pile of clothes, inside a closet, which was kept closed and locked when Emilio's parents were not there. The bedroom door also locked. Emilio directed his mother and daughter to show the deputies where the weapons were located.

According to Emilio and Maria A., appellant's grandmother, appellant slept in a small bedroom, not in the living room, when appellant was with them, and Emilio slept in the living room. But Maria also testified that appellant would sleep in the living room when he wanted.

Appellant testified on his own behalf, denying that he ran from the deputies. He told the officers that the guns belonged to his father, who had a permit for them. Because he was under the influence of marijuana and was being sarcastic, appellant lied to the deputies when he told them that he checked the gun in the entertainment center, knew his

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2 *Miranda v. Arizona* (1966) 384 U.S. 436.

father owned two guns, and had access to them at anytime. His father never told him where the guns were located.

According to appellant's grandmother, she kept her room locked when she was not there and sometimes when she was. Only she knew where the gun in her bedroom was kept. She testified that she showed one of the deputies where the gun was and that he did not find it on his own. She kept the gun in her room because there were children in the house. She did not know where the other gun was kept and did not see it in the entertainment cabinet in the few days before the search. Everyone had access to the entertainment cabinet.

Appellant's sister, Adriana, corroborated that Maria directed the officers to the weapon in Maria's room, which was in a covered bin in the closet, and that the gun in the entertainment cabinet was not visible.

DISCUSSION

I. Sufficiency of the evidence

Appellant contends that there is insufficient evidence to support the finding that he was a minor in possession of a firearm. He argues that the evidence that he had access, control, or dominion over either of the handguns was lacking. This contention is meritless.

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the jury could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal on this ground is unwarranted unless '"upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin, supra,* at p. 331.) The same principles apply with respect to juvenile proceedings under section 602 of the Welfare and Institutions Code. (*In re Jesse L.* (1990) 221 Cal.App.3d 161, 165.) "The trier of fact,

not the appellate court, must be convinced of the minor's guilt, and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

Section 12101 provides in pertinent part: "(a)(1) A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person." We have found no case specifically interpreting the meaning of "possession" in that statute, but the term has been interpreted in analogous statutes. The court in *In re Daniel G.* (2004) 120 Cal.App.4th 824 (*Daniel G.*) discussed the meaning of "possession" in section 12280, subdivision (b), which prohibits possession of an assault weapon. In that case the court observed that possession can be actual or constructive. (*Daniel G., supra,* at p. 831.) "Actual or constructive possession is the right to exercise dominion and control over the contraband or the right to exercise dominion and control over the place where it is found." (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622.) *"Exclusive possession is not necessary. A defendant does not avoid conviction if his right to exercise dominion and control over the place where the contraband was located is shared with others*." (*Ibid.*, italics added.) Possession for even a limited time or purpose may be sufficient. (*Daniel G., supra,* at p. 831.)

Actual possession means the person himself has the weapon. (*Daniel G., supra,* 120 Cal.App.4th at p. 831.) "Constructive possession means the object is not in the defendant's physical possession, but the defendant knowingly exercises control or the right to control the object." (*Daniel G., supra,* 120 Cal.App.4th at p. 831.) It "'occurs when the accused maintains control or a right to control the contraband; possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another.'" (*People v. Johnson* (1984) 158 Cal.App.3d 850, 854, quoting *People v. Newman* (1971) 5 Cal.3d 48, 52, which was disapproved on another issue in *People v. Daniels* (1975) 14 Cal.3d 857.) But proof of

opportunity for access to a place where contraband is located without more will not support a finding of unlawful possession. (*People v. Redrick* (1961) 55 Cal.2d 282, 285.)

The evidence here was sufficient to establish that appellant had constructive possession of the firearm kept in the entertainment cabinet. He admitted to sheriff deputies that he had possessed the firearm when he told them that "he recently checked the gun [in the living room entertainment cabinet] to see if it was loaded." This established that he had access to, and dominion and control over the handgun, albeit jointly with his father or other family members.

Citing *People v. Alvarez* (2002) 27 Cal.4th 1161, appellant argues that under the "corpus delicti" or "independent proof" rule, appellant's testimony alone was insufficient to support his conviction and that there was no corroborating evidence. The corpus delicti rule "'essentially precludes *conviction* based solely on a defendant's out-of-court statements.'" (*Id.* at p. 1178.) It requires the prosecution to prove as part of its burden of proof corroboration of the defendant's extrajudicial utterances insofar as they indicate that a crime was committed. (*Ibid.*) The defendant's out-of-court statement cannot be the sole proof a crime was committed. (*Id.* at p. 1179.) But "the modicum of necessary independent evidence of the corpus delicti, and thus the jury's duty to find such independent proof, is not great. The independent evidence may be circumstantial, and need only be 'a slight or prima facie showing' permitting an inference of injury, loss, or harm from a criminal agency . . . ." (*Id.* at p. 1181.)

Appellant's acknowledgement of possession, dominion and control of the gun in the entertainment cabinet was adequately corroborated by other testimony. Maria testified that appellant sometimes slept in the living room, near the entertainment cabinet where that gun was kept, and that everyone in the house had access to the cabinet. Appellant and Emilio told deputies that appellant slept in the living room. Deputy Bell testified that he and Deputy Perez found the gun in the entertainment cabinet in plain view, where appellant would have seen it and had access to it. This evidence was sufficient corroboration of appellant's testimony to support the juvenile court's finding.

II. Validity of condition that father not possess firearms

During the disposition hearing, the People argued for a camp placement in light of appellant's gang involvement and prior history. But the juvenile court continued appellant home on probation, and stated, "Over the People's objection, I am going to do this: I will place him home on house arrest. I want no weapons anymore at your house. Dad, I'm sorry, no weapons, none. Zero. No cabinets, no underneath the laundry, no in the garage, in the rafters, none. None. None." Emilio responded, "Right, okay."

Appellant contends that the condition of probation that his father not possess any firearms is unconstitutionally overbroad. He argues that the juvenile court was without jurisdiction over his father to issue the probation condition, and that the condition is overbroad because it restricts constitutionally protected conduct. He further argues that the condition impairs the rights of third parties not before the juvenile court and that appellant has the right to raise the claims of his father under the overbreadth doctrine.

The People respond that appellant lacks standing to raise this contention on appeal on behalf of his father because he forfeited the claim by failing to assert it in the court below, and that the Second Amendment is inapplicable to the states and applies to federal government activity.

We conclude that if the juvenile court's comments to Emilio regarding firearms constitute an order to him, appellant lacks standing to challenge that order. Generally, constitutional rights are personal and may not be asserted vicariously. (*Broadrick v. Oklahoma* (1973) 413 U.S. 601, 610 (*Broadrick*).) A few limited exceptions to this principle have been recognized, but only because of "'the most weighty countervailing policies.'" (*Id.* at p. 611.) One such exception, relied upon here by appellant, the overbreadth doctrine, applies where litigants are permitted to challenge a statute impinging upon First Amendment rights, not because their own rights of free expression are violated but because the statute may cause others not before the court to refrain from constitutionally protected speech or expression. "[O]verbreadth is a function of substantive First Amendment law. Outside these . . . limited settings, and absent a good

reason, we do not extend an invitation to bring overbreadth claims." (*Sabri v. United States* (2004) 541 U.S. 600, 610.)

Citing *Broadrick*, appellant argues that the overbreadth doctrine applies here "because [the challenged condition precluding appellant's father from possessing guns] proscribes . . . the constitutional rights of a third party who was not before the juvenile court or within its jurisdiction. [It's] 'very existence may cause others not before the court to refrain from constitutionally protected speech or expression.'"

We decline to apply the overbreadth doctrine. Appellant has cited, and we have found, no case applying that doctrine, which as announced in *Broadrick* is focused on the right to free speech,[3] to the second Amendment right to bear arms. We are not inclined to extend the doctrine beyond its originally contemplated scope. As *Broadrick* explains: "Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort." (*Broadrick, supra,* 413 U.S. at p. 613.)

Further, *Broadrick* was concerned with a *statute* that impinged on First Amendment rights and therefore had broad impact in chilling the free speech of people not before the court. Thus, according standing to challenge the statute to those before the court, to whom the statute might be constitutionally applied, was necessary to facilitate the opportunity to eliminate its overbreadth and chill as to others. This consideration is not present here. Our concern is not with a statute of general applicability but rather a court probation condition affecting only one person, the minor's parent.

We note that Emilio had an effective avenue to assert his rights. He could have objected to the condition instead of agreeing to it. He could have appealed on his own behalf. Where a parent is *directly affected*, such as by an order to the parent, an appeal lies. (See *In re Michael S.* (2007) 147 Cal.App.4th 1443, 1448 [parent jointly liable for civil damages for minor's wrongdoing is directly affected by juvenile court order and has

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[3] *In re Englebrecht* (1998) 67 Cal.App.4th 486, cited by appellant, also discussed the overbreadth concept in the context of an improper restriction on free speech.

right to appeal]; *In re Jeffrey M.* (2006) 141 Cal.App.4th 1017, 1021 ["Although section 800 [of the Welfare and Institutions Code] does not expressly afford a minor's parent the right to appeal a judgment or order of the juvenile court made in a section 601 or 602 proceeding, a parent has the authority to appeal to protect his or her own interests"]; Code Civ. Proc., § 902 ["Any party aggrieved may appeal. . . ."].) Consequently, Emilio could appeal an order directed at him regulating his possession of firearms.[4] We find no reason to permit appellant to assert rights on Emilio's behalf.

Even if appellant had standing to raise this claim we would reject it. To the extent appellant construes the juvenile court's statements to Emilio as a probation condition, he is wrong. Emilio is not on probation, and the court's statement to him cannot therefore be considered a probation condition to him. Moreover, construing the juvenile court's statement to Emilio in the circumstances presented, as we must (*In re Gideon* (1958) 157 Cal.App.2d 133, 137 ["'the same rules of interpretation apply in ascertaining the meaning of a court order or judgment as in ascertaining the meaning of any other writing, and if the language be in any degree uncertain, we may properly refer to the circumstances surrounding the making of the order or judgment. . . .'"]), it does not appear that the juvenile court's comments constituted an order to Emilio, but rather an explanation of the restrictions imposed by the probation condition that appellant not possess deadly or dangerous weapons.

First, contrary to appellant's argument, the juvenile court's statement was not a prohibition on Emilio's possessing guns. At most, it was a restriction on his having them in the house where appellant resided. The court told Emilio, "Dad, I'm sorry, no

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[4] There is disagreement as to whether Welfare and Institutions Code section 800 limits juvenile delinquency appeals to the minor (*In re Sarah F.* (1987) 191 Cal.App.3d 398, 402 ["the appealability of juvenile court orders is governed, not by the Code of Civil Procedure, but by the Welfare and Institutions Code [section 800]"]; *In re Almalik S.* (1998) 68 Cal.App.4th 851, 854) or whether Code of Civil Procedure section 902, allows parents to appeal such matters (*In re Robert W.* (1977) 68 Cal.App.3d 705, 717 ["a parent in a juvenile court proceeding is a party to such proceeding with a substantial interest—the interest of protecting the parent-child relationship and the parent's right to custody"]).

weapons, none. Zero. No cabinets, no underneath the laundry, no in the garage, in the rafters, none. None. None." It followed the juvenile court's direction to appellant that in order to satisfy appellant's probation conditions, "I want no weapons anymore at your house." Certainly this was a caution to Emilio that in order for appellant to meet the condition that there be no weapons at appellant's house, the father could not have weapons in the house. Such a restriction on appellant was reasonable in light of the facts that appellant was on probation at the time of the charged offense for possession of a firearm and had admitted to participating in gang activity.

Appellant argues that the challenged probation condition "is invalid because it imposes a duty on someone other than appellant and makes appellant's probation depend on matters out of appellant's control." But appellant forgets that the People sought camp placement in light of his prior offense and gang involvement. The juvenile court ordered "house arrest" just before indicating that there were to be no weapons in appellant's house, suggesting that this condition made it possible for the juvenile court to reject the district attorney's request for camp placement and impose a more lenient disposition. We agree with respondent that reasonably construed, the challenged juvenile court's statement was an explanation of the order that appellant not be placed in a home in which there were guns or other deadly or dangerous weapons. This was a patently reasonable condition in light of appellant's past involvement with gangs and firearm. Emilio indicated that he no longer had his guns which remained with the police and that he was not going to keep guns in the house.

Appellant also ignores the fact that the "someone" on whose action appellant's probation was dependent was not just anyone, but his father, who, as a parent, had various legal responsibilities in the disposition of the juvenile delinquency proceedings involving his minor child. These responsibilities certainly could include keeping weapons out of the home he provided for appellant.

DISPOSITION

The order of wardship is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ